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ABSTRACT

The two religion clauses of the First Amendment of the Constitution clearly declared the objectives of the framers, toleration and separation, but the means whereby these objectives were to be achieved were left to be decided through the dynamic processes of the courts. The history of these two clauses reveals that Americans are still seeking to secure these objectives. For example, Americans are still wrestling with these objectives in the schools, where there is much conflict revolving around the issues of "separation" and "tolerance." There have been three well-known recent attempts to censor the public school curriculum: the creationist-evolutionist dispute; the secular humanism controversy; and the debate regarding using the schools to establish "traditional values" or to censor materials which do not maintain these "traditional values." These challenges are also an outgrowth of forces at work in the wider society and represent the evolution of society. Some issues of this connection are basically legal questions, such as the creationist controversy. Other issues are more philosophical, such as the humanist controversy. The question of values is a psychological and moral one. Each of these challenges, however, represents points of friction between often widely different views of the past, present, and future and is to be expected in a society that is both free and diverse. (MS)

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Argumentation and Controversy:

The Separation of Church and State in Education

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INTRODUCTION

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

Two Foundational Values Of Americans

The two religion clauses of the First Amendment of the Constitution clearly declared the objectives of the framers, toleration and separation, but the means whereby these objectives were to be achieved were left to be decided through the dynamic processes of the courts. The history of these two clauses reveals that Americans are still seeking to secure the objectives so parsimoniously stated in the First Amendment. Like most other constitutional matters, the interpretation and application of these two clauses have produced a dialectical movement toward an as yet unknown outcome. Progression toward the this goal is occurring within the context of an increasingly pluralistic society in which there is a complex mixture of differing and sometimes conflicting belief systems. This religious heterogeneity has resulted in great difficulty in achieving the goals mandated by the First Amendment, but these goals are still being striven for. The challenge presented by the religion clause of the First Amendment is to ensure the right of all to freedom of belief and expression without establishing a state religion, which would effectively limit both belief and

expression. The state can allow the free exercise of some and yet establish a state religion, but the state cannot allow the free exercise of all and at the same time establish a religion or prefer one particular religion. The First Amendment mandates state neutrality with regard to religious beliefs and , as such, is a foundational value of American society.

Another foundational value of American society is a belief in universal education. This belief in education had its roots in two particular American traditions. The first may be referred to as the liberal-democratic tradition. In this respect, the Jeffersonian belief that knowledge and freedom are inexorably bound together is axiomatic. Americans believe that an informed, educated electorate is a necessary condition for democratic government. The second American tradition which gave rise to a belief in the necessity of education is more recent in origin, but perhaps carries greater weight with most Americans than the first. This is the belief that education provides the means for success in life.

The Problem

The belief in an informed electorate and the belief that education provides the means for a successful life combined early in American history to produce the common school movement and governmental support of education. The subsequent homogeneity in the educational approach,

which is in direct contrast with the heterogeneous approach to religion, is the basis of the problem of curriculum censorship. The schools of America have been the scene of much conflict revolving around the issues of "separation" and "tolerance." Therefore, this paper will examine the current social context in which religiously motivated attempts to censor the public school curriculum are occurring. Specifically, this paper will attempt to analyze the social context of three well known attempts to censure the curriculum: first, the creationist-evolutionist dispute; second, the secular humanism controversy; and third, various attempts to use the schools to establish "traditional values" or to censor materials which do not maintain these "traditional values."

Curricula challenges raise a central question in the current debate: Can any religious group use the school system to propagate its beliefs? Those who seek to change or even censor materials or curricula, in effect, seek to use the schools to transmit their particular belief system to the exclusion of other competing belief systems. These curricular challenges are in reality free speech issues and as such they are usually approached on the basis of the free speech clauses of the First Amendment, but it may be helpful to approach them from the establishment of religion clause.

Conflicting Viewpoints

The current debate concerning the public school curriculum can be seen in microcosm in these three religiously based challenges to the public school curriculum: creationism, humanism, and values in the public school. The controversies surrounding these challenges at first glance may appear to be disconnected and unrelated. However, upon closer examination, a connection can be seen. For the most part, the opposing parties in these three debates hold to opposing world and life views and as such argue from different fields. These views are based on two different epistemological systems: revelational faith on the one hand and scientific rationalism on the other hand. The conflict between these two views of truth and reality is, in effect, a conflict between the modern world and those who reject or seek to modify modernity. The tension between these two world and life views has produced objections by various groups and individuals to the public school curriculum and these objections have at times led to attempts to censure the curriculum of material which some consider objectionable. At other times, attempts have been made to use the public school curriculum to impose a single religious view on the wider culture.

A Historical Review Of The First Amendment

And Education

A historical review of the principle of separation of church and state as articulated in the First Amendment and as interpreted by the Courts shows an evolution of the principle of separation of church and state and its relationship to public education. Significant establishment cases have been decided by the Supreme Court since 1947. During the first part of this period, from 1947 - 1962, the Court followed an unclear pattern of accommodation and separation.¹ Beginning in 1963, the Court adopted a stricter separationist approach.² During the last sixty years, the Court has developed a three-fold test for establishment clause cases. First, the "secular purpose" test was designed to determine if the purpose of the legislation was to advance religion.³ Second, the "primary effects" test was set forth to carry the test beyond intent to the actual effects of the legislation.⁴ Third, the court articulated the "excessive entanglement" test, which seeks to avoid government entanglement which would come through supervision of government aid to religious institutions.⁵ The latest period of case law development has been characterized by a separatist approach. There are some indications that the present Court may adopt a more accommodationist approach; however, this point remains to be seen. The majority opinion in

Committee for Public Education and Religious Liberty v. Regan,⁶ summarizes the difficulty in the separationist-accommodationist dilemma:

Establishment Clause cases are not easy; they stir deep feelings; and we are divided among ourselves, perhaps reflecting the different views on this subject of the people of the country. What is certain is that our decisions have tended to avoid categorical imperatives and absolutist approaches at either end of the range of possible outcomes. This course sacrifices clarity and predictability for flexibility, but this promises to be the case until the continuing interaction between the courts and the States - the former charged with interpreting and upholding the Constitution and the latter seeking to provide education for their youth - produces a single, more encompassing construction of the Establishment Clause.⁷

A Geometric Analogy

As an aid to understanding the context of these three controversies, a three-fold geometric analogy may be helpful. The controversies can be viewed as occurring in a three-dimensional context. First, there is a circular dimension; second, there is a horizontal dimension; and third, there is a vertical dimension.⁸

The Creationist-Evolutionist Controversy

The creationist-evolutionist debate can be viewed as occurring in a circular dimension. Two circles comprise the context from which the debate springs. The two circles are concentric, but not equal. The inner, smaller circle represents the legal-institutional context. Within this context the courts have evolved a doctrine of separation which precludes the use of the public schools

as a means of fostering a particular religious view. In the legal-institutional context, the question as to whether the public schools can teach creationism or scientific creationism has been answered. The creationist view is primarily a religious view and as such the courts have determined it can not be fostered by the public schools.⁹

The outer circle represents the wider cultural setting in which religion and democracy are in a relationship which sometimes causes stress. The American culture is one in which a religiously diverse nation of people have embraced a democratic ideal. The religious-democratic realm is one in which differing and often conflicting religious views must be tolerated and allowed full and free expression. If the public schools dealt only with scientific matters, the problem of creationism would never arise, since the teaching of religion is legally prohibited, but the courts have not prohibited teaching about religion.¹⁰ Teaching about religion is, in fact, a necessary part of the social sciences curriculum since religion is an integral part of American society. The social studies curriculum could and perhaps should teach about creationism. Creationism could be taught by attribution; that is, a teacher or a text could say certain people believe that the universe and human life are products of divine creation. In this approach , any

number of views about origins could be discussed without violating the principle of separation of church and state. This attribution approach would also be a means of exposing students to a wide diversity of views represented in American society. The religious-democratic dimension is and will continue to be characterized by democratic processes. Debate, and even controversy, are a sign of a healthy democracy. While the public schools will continue to be a focal point of democratic debate, the schools can not yield to any particular religious view. The Constitution, as interpreted by the courts, protects the American people from tyranny of either the majority or the minority. It is clear that public schools must remain neutral on the question of the religious belief in divine creation and can not teach divine creation or "scientific creationism " as fact.

The Humanist Controversy

The humanist controversy can be seen as occurring in a horizontal dimension. The horizontal dimension is one in which the historical development of ideas and beliefs occurs. On the horizontal level, ideas move from the past to the present. American education began by fostering a protestant Christian viewpoint,¹¹ but as the system of public education evolved within a changing social context the educational viewpoint changed from a protestant Christian perspective through various stages. As the

educational philosophy changed, the public school moved from a system in which a sectarian religious viewpoint was dominant to the present system in which a non-sectarian, humanistic viewpoint is dominant. The present controversy involves a misunderstanding of the way this evolutionary process has defined the present, but the controversy also involves conflicting visions of what the future evolutionary course of our culture should be. The horizontal plane extends from the past to the present into the future. The second point of controversy revolves around conflicting visions of what ought to be. In a democracy, antithetical visions should move the society toward a synthesis. If the dialectical process is allowed to work itself out, then the American educational system is probably moving toward a viewpoint which is not only non-sectarian and humanistic, but will be non-secular as well. This means that some form of transcendent, but non-sectarian, religious view could be synthesized from the secular humanist-fundamentalist antithesis. At this point it should be noted that the term humanism may refer to either a philosophical view which is essentially religious in nature or a philosophy which is anti-religious in nature.¹² If and when the latter is true, that view can not be fostered by the public school, since, as noted above, the public school curriculum must be neutral toward religion: that is, the curriculum can neither be for or

against religion.

Moral Values Education

The debate concerning moral values education in the public schools can be seen as occurring in a vertical dimension. Whereas the creationist controversy is theological and the debate over secular-humanism is philosophical in nature and involve conflicting views over religion and the philosophy, the debate over moral values education is at bottom a psychological debate over personal development. The vertical dimension debate springs from conflicting views of human nature, and the principles which govern or should govern human behavior. The values debate is perhaps the most difficult to grasp. The present educational approach to moral values education is in a state of flux. There are two major approaches to moral values education currently being employed by public schools. The values clarification approach is a well-intentioned intellectual approach to resolve the dilemma created by the mandate to maintain a neutral stance toward specific religious beliefs and the social need to ensure the continuation of certain beliefs upon which American democracy is built, but it is probably inadequate.¹³ Kohlberg's approach offers hope of constructing an approach to moral values education which may resolve the dilemma. There are some basic moral values which have persisted in western civilization for two and a half

millennia. The pragmatic spirit in America will probably continue to nurture these values. The question is: "How does a nation conserve and transmit values, many of which have a religious basis, without using the public schools to establish a religion?" Moral values education has always been and will continue to be a part of the American school system, since the educational process can not be value neutral. The current debate reflects a continuing search for the values which will be transmitted to students, and should not pose any form of threat so long as a separatist approach is followed.

Conclusion

Challenges to the public school curriculum during the last decade in reality have been efforts to censor the school curriculum. Furthermore, these challenges are an outgrowth of forces at work in the wider society and represent the evolution of society. Some issues in this connection are basically legal questions, such as the creationist controversy. Other issues are more philosophical, such as the humanist controversy. Finally, the question of values is a psychological and moral one. Each of these challenges, however, represents the points of friction between often widely different views of the past, present, and future and is to be expected in a society that is both free and diverse.

Notes

¹ Note: In Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947), the court gave an unclear signal. The majority upheld a New Jersey law which gave aid to parents of parochial school children who incurred costs riding public transit buses to and from school. The confusion arose from the fact that the opinion written by Justice Black used strong separationist language, but allowed the subsidy to continue. This inconsistency prompted Justice Jackson to remark in his dissenting opinion that the majority opinion reminded him of Byron's Julia, who, "whispering 'I will never consent,' consented." This desire for separation and accommodation continued and in 1952, in Zorach v. Clauson, 343 U.S. 306 (1952), Justice Douglas argued for accommodation by arguing that Americans are "a religious people." The Everson case is significant because it shows the power of the argument of the minority to change the minds of others on the court.

² By 1962, Justice Douglas had changed his mind and accepted the argument of the minority in Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947). His vote proved to be the swing vote in the twin prayer cases of 1962 and 1963. In 1962, in Abington v. Schemp, 374 U.S. 203 (1963), the court determined that state prescribed prayer was unconstitutional. In Engel v. Vitale, 370 U.S. 421 (1962) the court confirmed the Abington decision.

³ In 1930, the court declared constitutional a Louisiana law providing for tax monies to be used to supply textbooks to school children, including some in religious schools (see Cochran v. Louisiana State Board of Education). Even though the Louisiana law was upheld, the secular purpose test was established. The case was not decided on First Amendment grounds, but, rather, on Fourteenth Amendment grounds and the court felt that the students instead of the parochial schools were the primary beneficiaries of the law.

⁴ In the case of Abington v. Schemp, 374 U.S. 203 (1963), the court added the "primary effects" test to the secular purpose test.

⁵ In 1971, in a case involving reimbursement to teachers in parochial schools who taught secular subjects, the court added the "excessive entanglement" test. The court hinted at a fourth test, "political divisiveness," but this has never been raised to the level of the three other tests. See Lemon v. Kurtzman, 403 U.S. 602 (1971).

⁶There are indications that the court may be willing to modify some of its views on the general subject of church-state relationship. In Thomas v. Review Board of Indiana Employment Securities, 49 L.W. 4341 (1981), Mr. Justice Rehnquist offered a far-reaching dissenting opinion in which he suggested that the church-state relationship should be reviewed. Rehnquist said:

I regret that the Court cannot see its way clear to restore what was surely intended to have been a greater degree of flexibility to the federal and state governments in legislating consistently with the free exercise clause.

⁷Committee for Public Education and Religious Liberty v. Regan, 444 U.S. 646, 100 S.Ct. 840 (1980) AT 851.

⁸Note: This approach was suggested by William H. Becker. It is followed here with some modifications. See William H. Becker, "Creationism: New Dimensions of the Religion-Democracy Relation," Journal of Church and State 27 (Spring 1985), 315-332.

⁹Contrary to what many believe, the "Scopes Monkey Trial" of 1929 did not settle the evolution question. In fact, the courts in 1929 upheld the Tennessee law. Arkansas had adopted an anti-evolution law in 1928 which was modeled after the Tennessee law. This law stood until 1968, when Susan Epperson, a teacher in the Little Rock school system, defied the law. When the case reached the Supreme Court, the anti-evolution law was declared unconstitutional because it failed the secular purpose test. See Epperson v. Arkansas, 393 U.S. 97, 1968.

The Creation Science controversy is the latest variation on this same theme. In 1982, the practice of requiring the teaching of creation science was declared unconstitutional, because, according to the ruling, Arkansas Law 590 failed all three establishment law tests. McLean v. Arkansas Board of Education, 529 F. supp. 1255 (1982). For a discussion of this case, see: Judge William R. Overton, "Creationism in Schools: The Decision in McLean v. Board of Education," Science 215 (February 1982) 934.

¹⁰See Stone v. Graham, 449 U.S. 39 (1980).

¹¹For a discussion of the beginnings of American education, see: Ellwood P. Cubberly, The History of Education (Cambridge, Massachusetts: Houghton Mifflin Co., 1948). Even though this book is somewhat dated, it is still recognized as a classic in the history of early American education.

¹²For a discussion of humanism from a variety of viewpoints, see: Paul Kurtz, ed., The Humanist Alternative: Some Definitions of Humanism (Buffalo, New York: Prometheus Books, 1973). See especially: Edwin H. Wilson, "Humanism's Many Dimensions," p. 15; Sidney Hook, "The Snare of Definitions," and Paul Kurtz, "Epilogue: Is Everyone a Humanist?" p. 177.

One of several problems with the humanist debate is that the religious-political right uses the word as a code word with a variety of pejorative implications (See Tim LaHaye, The Battle For The Public Schools . Old Tappan N.J.: Fleming H. Revell, Co. 1983.

¹³For a discussion of values clarification see: Louis E. Raths, et al., Values and Teaching (Columbus: Charles E. Merrill Pub. Co., 1978). For a presentation of Kohlberg's approach, see: Lawrence Kohlberg, The Philosophy of Moral Development. Moral Strategies and the Idea of Justice (San Francisco: Harper and Row, Pub., 1981). Note Kohlberg's criticism of values clarification on p. 12.